

EXHIBIT H



Transcript of **Dr. Saul Cornell**

Monday, April 4, 2022

Kristin Worth v. John Harrington

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Reference Number: 113261

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MINNESOTA

3 Court File No. 21-1348

4 - - - - -
5 KRISTIN WORTH, et al.,

6 Plaintiff,

7 v.

8 JOHN HARRINGTON, in his
9 individual capacity and in his official
10 capacity as Commissioner of the
11 Minnesota Department of Public
12 Safety et al.,

13 Defendants.
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18 VIDEOTAPED ZOOM DEPOSITION OF
19 DR. SAUL CORNELL
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24 Taken April 4, 2022 By Kelly A. Herrick
25

1 A. Yes.

2 Q. And then he says, "Since Heller, historians,
3 scholars, and judges have continued to
4 express the view that the Court's historical
5 account was flawed."

6 And, then, you're one of those
7 scholars listed there, correct?

8 A. Correct.

9 Q. And you believe that the Heller Court's
10 historical account of the Second Amendment
11 was flawed, correct?

12 A. That is correct, which is the general view
13 of most historians.

14 Q. And you believe that Heller obliterated the
15 real history of the Second Amendment and
16 substituted to displace an originalist
17 fantasy, correct?

18 A. That is correct.

19 Q. Okay. And Justice Breyer's contempt of the
20 Heller majority was well-earned, correct?

21 A. Sorry, could you rephrase the way you framed
22 that?

23 Q. Justice Breyer's contempt of the Heller
24 majority was well-earned?

25 A. Sorry, would you character Justice Breyer as

1 And is this Brief of Thirty-Four
2 Professional Historians and Legal Historians
3 as Amici Curiae in Support of Respondents,
4 this is your Amicus Briefs that you joined
5 in McDonald, correct?

6 A. Correct.

7 Q. Okay. I'm going to ask you about the
8 position you took here. Okay. So in this
9 last paragraph of the Summary of Argument
10 you say, "It would therefore be contrary to
11 early practice under the Fourteenth
12 Amendment to block states and cities from
13 enacting reasonable gun regulations,
14 including bans on specific types of
15 dangerous weapons, such as the laws at issue
16 in this case."

17 Now, again, the Supreme Court did
18 not adopt your view in McDonald, correct?

19 A. That is correct. I'm actually 0 for 4 in
20 front of the court. I have one of the
21 worst, you know, batting averages of anyone
22 I know.

23 As I tell my students, I really
24 appreciate that they have one of the great
25 losers as their professor.

1 And, you know, I'm sure under
2 French law that was perfectly legal, but
3 it's a kind of law that's not very useful in
4 terms of understanding what was the real
5 danger of flying saucers interfering with
6 French wine production in the 1950s?

7 Q. So I take it there were no such laws in the
8 Founding Era, correct?

9 A. It's a bad question because it doesn't --
10 you know, you have to ask a question that's
11 grounded in the actual history.

12 So a question like that,
13 unfortunately, rests on a poorly articulated
14 set of assumptions about what the reality of
15 firearms ownership was in the Eighteenth
16 Century.

17 So, yes, given that there was a
18 shortage of firearms, and government policy
19 was aimed to increase firearm production,
20 passing allow against acquiring firearms
21 wouldn't have made a whole lot of sense.

22 Q. Right. And, you know, I'm not articulating
23 any theory, you're the historian, I'm asking
24 you a factual question about history.

25 And so, the answer is there were no

1 laws in the Founding Era making it unlawful
2 for 18-to-20 year olds to acquire firearms,
3 correct?

4 A. No, there -- no, not that I'm aware of,
5 correct.

6 Q. Okay. And there were no laws in the
7 Founding Era making it unlawful for 18-to-20
8 year olds to carry firearms, correct?

9 A. Well, that's not entirely true.

10 Q. Well, let me ask it this way: Were there
11 any laws in the Founding Era making it
12 unlawful for 18-to-20 year olds to carry
13 firearms on account of their age or status
14 distinct from any restrictions that were on
15 anybody else?

16 A. So we do have a variety of statutes
17 forbidding 18-year-olds and anyone who is
18 attending a college or university from
19 carrying firearms.

20 Q. Laws?

21 A. Yeah.

22 Q. Okay.

23 A. And so that was one of the few examples in
24 the Eighteenth Century where you could get
25 an individual outside of the patriarchal

1 Q. Okay. And outside -- and how many of those
2 were in place during the Founding Era?

3 A. Well, we don't have that many colleges so I
4 would say a significant number of the
5 colleges and universities had some kind of
6 law like that.

7 Q. During the Founding Era?

8 A. Yeah.

9 Q. Okay. And during -- apart from those during
10 the Founding Era, were there any laws making
11 it unlawful for 18-to-20 year olds to carry
12 firearms distinct from the background
13 principles about carrying firearms --
14 generally acceptable principles?

15 A. I don't believe so.

16 Q. And during the Founding Era, did people
17 under the age of 21 carry firearms for
18 hunting?

19 A. Are you asking, did they carry them for
20 hunting -- you know, again, I haven't -- I
21 haven't done a deep dive into that.

22 Clearly there was a lot of hunting
23 going on, and clearly I'm sure some people
24 under the age with the approval of their
25 parents went hunting, sure.

1 founding, there was a legal distinction
2 between minors and adults without any middle
3 category of a young adult?

4 A. Yes.

5 Q. Okay. And so at the founding -- during the
6 Founding Era, you know, a person would
7 transition from a minor having very
8 restricted legal rights to an adult having
9 full legal rights; is that correct?

10 A. Yes. It's one of the reasons why life is
11 better now.

12 Q. Okay. All right. So let's go to page 12
13 now. And you discuss this instance in
14 New York, and you say "Federalist Elisha
15 Williams, a delegate from Columbia County,
16 wondered if his democratic opponents wished
17 to enfranchise 'brave infants' by giving
18 them the right to vote. Extending full
19 rights to minors was literally treated as a
20 joke in early nineteenth century America."

21 Now, the joke you refer to had
22 regards to voting rights, correct, not arms
23 rights?

24 A. Yes.

25 Q. Okay. And if we go to 52, it's from this

1 military law would -- would be -- would be
2 in full operation since you were now -- you
3 had transitioned from your civilian status
4 to your status as an active duty militia
5 person.

6 Q. Okay. And did Founding Era militia laws
7 restrict the ability of militia members to
8 carry firearms outside of militia service?

9 A. No. By definition, they dealt with the use
10 of arms in the context of militia services.

11 Q. And did Founding Era militia laws regulate
12 the possession of firearms that were not
13 required for militia service?

14 A. In one very interesting sense, they did. So
15 multiple militia statutes from multiple
16 jurisdictions were explicit that the gun you
17 owned for militia service was exempt from
18 seizure in a distress or any kind of debt
19 proceeding and could not be sold to pay for
20 tax arrears, whereas other guns you might
21 have owned were subject to the full force of
22 any kind of Court Ordered seizure.

23 So in that fascinating sense,
24 militia statutes suggest that the gun you
25 owned for the militia enjoyed a higher level